

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NICHOLAS A. TIRADO,

Plaintiff,

v.

S. SANTIAGO, *et al.*,

Defendants.

Case No. 1:22-cv-724-BAM (PC)

**SCREENING ORDER GRANTING
PLAINTIFF LEAVE TO FILE AMENDED
COMPLAINT**

(ECF No. 1)

THIRTY (30) DAY DEADLINE

Plaintiff Nicholas A. Tirado (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed June 6, 2022, is currently before the Court for screening. (ECF No. 1.)

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

II. Plaintiff’s Allegations

Plaintiff is currently housed at California State Prison in Lancaster, California. The events in the complaint are alleged to have occurred at California Substance Abuse and Treatment Facility in Corcoran, California (“SATF”). Plaintiff names the following defendants: (1) S. Santiago, Correctional Officer, S3E second and/or third watch, D yard, (2) Herrmann, Sergeant, D. yard.

Plaintiff alleges as follows. “On November 9th and 16th 2021 in Corcoran, CA, SATF, D yard, [Plaintiff] was met with unprofessional staff misconduct by Defendant.” Plaintiff refers to Exh. A and B attached to the complaint and witness Ricky G. Reeves. (See Doc. 1, p. 15 (“an officer made the following comment to him, ‘I’m not the one who locked it up because of safety concerns.’”))¹ Safety concerns are supposed to be confidential and the comment was made in front of multiple inmates, officers and nurses. (Doc. 1-1, p. 6.) Santiago’s comment activated Plaintiff’s PTSD. Plaintiff filed a 602 to appeal and reprimand Defendant. Acting Sergeant Herrmann replied with false allegations that there was no specific to date or time in order to check for camera footage.

While housed at D yard, Defendant retaliated against Plaintiff by withholding a package;

¹ See Exh. A, Doc. 1-1 (Santiago said, “your [sic] the one who locked it up over safety concerns.”)

1 Plaintiff's J Pay tablet. Plaintiff refers to Exh. C attached to the complaint. In Exh. C, Plaintiff
2 states that he needs the tablet for communication with this family.

3 Plaintiff alleges that "due to the exposed confidential information [Plaintiff] was
4 attacked." Plaintiff refers to Exh. D attached to the complaint, which is documentation related to
5 past attacks. Plaintiff has had multiple attacks on him while in prison. On March 8, 2022, he was
6 attacked.² Due to the multiple attacks, there is an ongoing threat to Plaintiff's life because of
7 Defendants' comments. As a result, Plaintiff has mental health issues.

8 Plaintiff seeks compensatory damages and punitive damages.

9 10 **III. Discussion**

11 Plaintiff's complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to
12 state a cognizable claim under 42 U.S.C. § 1983. Because he is proceeding pro se, Plaintiff will
13 be granted leave to amend his complaint to the extent that he can do so in good faith. To assist
14 Plaintiff, the Court provides the pleading and legal standards that appear relevant to his claims.

15 **A. Federal Rule of Civil Procedure 8**

16 Pursuant to Rule 8, a complaint must contain "a short and plain statement of the claim
17 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed factual allegations
18 are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
19 conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must
20 set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on
21 its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
22 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*,
23 572 F.3d at 969.

24 Here, Plaintiff's complaint is short, but it is not a plain statement of his claims showing
25 that he is entitled to relief. Plaintiff's allegations are conclusory do not state what happened,
26 when it happened, or which defendant was involved. General assertions regarding Plaintiff's

27 ² The incident reports in Exh. D report a fight on fight involving Plaintiff and one to two other
28 inmates.

1 fears that certain CDCR employees are trying to set up Plaintiff are not sufficient, and Plaintiff
 2 may not merely state the elements of a cause of action without providing any factual allegations
 3 in support of his claims. Plaintiff should state his key factual allegations in the body of the
 4 complaint and not incorporate by reference the entirety of his Exhibits. The Court cannot discern
 5 which facts are important to Plaintiff's claims. If Plaintiff files an amended complaint, it should
 6 be a short and plain statement of his claims, and must include factual allegations identifying what
 7 happened, when it happened and who was involved. Fed. R. Civ. P. 8.

8 **B. Supervisory Liability**

9 To the extent Plaintiff seeks to hold any defendant liable based solely upon their
 10 supervisory role, he may not do so. Liability may not be imposed on supervisory personnel for
 11 the actions or omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556
 12 U.S. at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v.*
 13 *City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th
 14 Cir. 2002). “A supervisor may be liable only if (1) he or she is personally involved in the
 15 constitutional deprivation, or (2) there is a sufficient causal connection between the supervisor's
 16 wrongful conduct and the constitutional violation.” *Crowley v. Bannister*, 734 F.3d 967, 977 (9th
 17 Cir. 2013) (citation and quotation marks omitted); accord *Lemire v. Cal. Dep't of Corrs. &*
 18 *Rehab.*, 726 F.3d 1062, 1074–75 (9th Cir. 2013); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 915–16
 19 (9th Cir. 2012) (en banc). “Under the latter theory, supervisory liability exists even without overt
 20 personal participation in the offensive act if supervisory officials implement a policy so deficient
 21 that the policy itself is a repudiation of constitutional rights and is the moving force of a
 22 constitutional violation.” *Crowley*, 734 F.3d at 977 (citing *Hansen v. Black*, 885 F.2d 642, 646
 23 (9th Cir. 1989)) (internal quotation marks omitted).

24 **C. Linkage**

25 The Civil Rights Act under which this action was filed provides:

26 Every person who, under color of [state law] . . . subjects, or causes to be
 27 subjected, any citizen of the United States . . . to the deprivation of any rights,
 28 privileges, or immunities secured by the Constitution . . . shall be liable to the
 party injured in an action at law, suit in equity, or other proper proceeding for
 redress.

42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.’” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

It is unclear who Plaintiff contends seized his tablet and who Plaintiff contends failed to protect him from the March 2022 assault.

D. Federal Rules of Civil Procedure 18 and 20

Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *Mackey v. Price*, 2020 WL 7319420, at *3–4 (E.D. Cal. Dec. 11, 2020), report and recommendation adopted, 2021 WL 843462 (E.D. Cal. Mar. 5, 2021). Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). The “same transaction” requirement refers to similarity in the factual background of a claim. *Id.* at 1349. Only if the defendants are properly joined under Rule 20(a) will the Court review the other claims to determine if they may be joined under Rule 18(a), which permits the joinder of multiple claims against the same party.

Plaintiff may not raise different claims against different defendants in a single action. For instance, Plaintiff may not, in a single case, assert a claim related to the failure to protect Plaintiff in November 2021 while simultaneously asserting claims regarding failure to protect in 2022 or with retaliation in January 2022 for withholding a tablet. Unrelated claims involving multiple defendants belong in different suits.

E. Eighth Amendment – Deliberate Indifference to Safety/Failure to Protect

1. Deliberate Indifference to Safety

Plaintiff contends that Defendant Santiago said, in front of other inmates, that Plaintiff “locked up” because of safety concerns. Plaintiff contends that this statement put his life in jeopardy.

The Eighth Amendment requires that prison officials take reasonable measures to guarantee the safety of prisoners. *Farmer v. Brennan*, 511 U.S. at 832. In particular, prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *Id.* at 833; *Cortez v. Skol*, 776 F. 3d 1046, 1050 (9th Cir. 2015); *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005); *Hoptowit v. Ray*, 682 F.2d 1237, 1250 (9th Cir. 1982); *Gillespie v. Civiletti*, 629 F.2d 637, 642 & n.3 (9th Cir. 1980).

The failure of prison officials to protect inmates from attacks by other inmates or from dangerous conditions at the prison violates the Eighth Amendment when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is, subjectively, deliberately indifferent to inmate health or safety. *Farmer*, 511 U.S. at 834. A prison official is deliberately indifferent if he knows of and disregards an excessive risk to inmate health or safety by failing to take reasonable steps to abate it. *Id.* at 837.

A prisoner may state a § 1983 claim under the Eighth Amendment against prison officials only where the officials acted with “deliberate indifference” to the threat of serious harm or injury to an inmate by another prisoner, *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986); see also *Valandingham v. Bojorquez*, 866 F.2d 1135, 1138 (9th Cir. 1989) (deliberately spreading rumor that prisoner is snitch may state claim for violation of right to be protected from violence while in state custody), or by physical conditions at the prison. The official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. *See Farmer*, 511 U.S. at 837. Mere negligent failure to protect an inmate from harm is not actionable under Section 1983. *See Farmer*, 511 U.S. at 835.

Plaintiff has not sufficiently alleged that Defendant Santiago put him in danger. Plaintiff does not allege specific facts showing that the defendant knew about a risk or danger to Plaintiff

1 and then disregarded that risk. Plaintiff does not describe how each of the defendants was
 2 actually aware of a specific threat to his safety. *See Williams v. Wood*, 223 F. App'x 670, 671
 3 (9th Cir. 2007) (“speculative and generalized fears of harm at the hands of other prisoners do not
 4 rise to a sufficiently substantial risk of serious harm”).

5 In particular, Plaintiff does not state a cognizable Eighth Amendment claim against
 6 Defendant Herrmann. There is no indication that this defendant was aware of any substantial risk
 7 of serious harm to Plaintiff at the hands of any inmates.

8 2. *Failure to Protect*

9 Plaintiff alleges several different unrelated incidents in which he was attacked by other
 10 inmates, including in January 2022 after Defendant Santiago purportedly disclosed Plaintiff’s
 11 confidential information.

12 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
 13 connection between a defendant's actions and the claimed deprivation. *Rizzo*, 423 U.S. 362, 96
 14 S.Ct. 598, 46 L.Ed.2d 561. Plaintiff fails to state a claim against Defendants Santiago and
 15 Herrmann because of Plaintiff conclusory allegations. There are no facts that these Defendants
 16 were aware of or in a position/location to protect Plaintiff. Plaintiff does not allege any facts
 17 which connect Defendant actions with any assault. Further, these claims are improperly joined.

18 F. First Amendment - Retaliation

19 “Prisoners have a First Amendment right to file grievances against prison officials and to
 20 be free from retaliation for doing so.” *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012)
 21 (citing *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009)). “Within the prison context, a
 22 viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
 23 state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected
 24 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and
 25 (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408
 26 F.3d 559, 567-68 (9th Cir. 2005). “[T]he mere threat of harm can be an adverse action....”
 27 *Brodheim*, 584 F.3d at 1270. A plaintiff must plead facts showing that their “protected conduct
 28 was the substantial or motivating factor behind the defendant's conduct.” *Id.* at 1271. To state a

1 cognizable retaliation claim, Plaintiff must establish a nexus between the retaliatory act and the
 2 protected activity. *Grenning v. Klemme*, 34 F.Supp.3d 1144, 1153 (E.D. Wash. 2014).

3 Although the allegations are unclear, Plaintiff claims that Defendant Santiago withheld his
 4 tablet. As currently pled, Plaintiff fails to set forth any factual allegations to support a claim of
 5 retaliation. The allegations are unclear that Plaintiff engaged in protected conduct. Plaintiff fails
 6 to allege the adverse action chilled Plaintiff's First Amendment rights and that did not reasonably
 7 advance a legitimate correctional goal. Plaintiff's conclusory allegations is insufficient to state a
 8 claim. In any amended complaint, Plaintiff must include sufficient allegations to state a
 9 retaliation claim that is cognizable on its face. Further, this claim is improperly joined.

10 **G. Failure to Investigate**

11 To the extent Plaintiff alleges that Defendant Herrmann failed to investigate Plaintiff's
 12 appeal regarding availability of body worn camera evidence, that is not a basis for a plausible
 13 §1983 claim. *Baker v. Beam*, 2019 WL 1455321, at *6 (E.D. Cal. 2019). To the degree Plaintiff is
 14 trying to hold the individuals or others liable for an independent, unspecified constitutional
 15 violation based upon an allegedly inadequate investigation, there is no such claim. *See Gomez v.*
 16 *Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985) (per curiam) (“[W]e can find no instance where the
 17 courts have recognized inadequate investigation as sufficient to state a civil rights claim unless
 18 there was another recognized constitutional right involved.”); *Page v. Stanley*, 2013 WL
 19 2456798, at *8–9 (C.D. Cal. June 5, 2013) (dismissing Section 1983 claim alleging that officers
 20 failed to conduct thorough investigation of plaintiff's complaints because plaintiff “had no
 21 constitutional right to any investigation of his citizen's complaint, much less a ‘thorough’
 22 investigation or a particular outcome”).

23 **H. Title 15 and Policy Violation**

24 To the extent that Defendant has not complied with applicable state statutes or prison
 25 regulations for disclosure of information, these deprivations do not support a claim under § 1983.
 26 Section 1983 only provides a cause of action for the deprivation of federally protected rights. *See*,
 27 e.g., *Nible v. Fink*, 828 Fed. Appx. 463 (9th Cir. 2020) (violations of Title 15 of the California
 28 Code of Regulations do not create private right of action); *Nurre v. Whitehead*, 580 F.3d 1087,

1 1092 (9th Cir. 2009) (section 1983 claims must be premised on violation of federal constitutional
 2 right); *Prock v. Warden*, No. 1:13-cv-01572-MJS (PC), 2013 WL 5553349, at *11–12 (E.D. Cal.
 3 Oct. 8, 2013) (noting that several district courts have found no implied private right of action
 4 under title 15 and stating that “no § 1983 claim arises for [violations of title 15] even if they
 5 occurred.”); *Parra v. Hernandez*, No. 08cv0191-H (CAB), 2009 WL 3818376, at *3 (S.D. Cal.
 6 Nov. 13, 2009) (granting motion to dismiss prisoner's claims brought pursuant to Title 15 of the
 7 California Code of Regulations); *Chappell v. Newbarth*, No. 1:06-cv-01378-OWW-WMW (PC),
 8 2009 WL 1211372, at *9 (E.D. Cal. May 1, 2009) (holding that there is no private right of action
 9 under Title 15 of the California Code of Regulations).

10 **IV. Conclusion and Order**

11 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails state
 12 a cognizable claim for relief. As Plaintiff is proceeding pro se, the Court will grant Plaintiff an
 13 opportunity to amend his complaint to cure the identified deficiencies to the extent he is able to
 14 do so in good faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

15 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
 16 each named defendant did that led to the deprivation of Plaintiff’s constitutional rights, *Iqbal*, 556
 17 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must
 18 be [sufficient] to raise a right to relief above the speculative level” *Twombly*, 550 U.S. at 555
 19 (citations omitted).

20 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
 21 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
 22 “buckshot” complaints).

23 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
 24 *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s amended
 25 complaint must be “complete in itself without reference to the prior or superseded pleading.”
 26 Local Rule 220.

27 Based on the foregoing, it is HEREBY ORDERED that:

- 28 1. The Clerk’s Office shall send Plaintiff a complaint form;

1 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
2 amended complaint curing the deficiencies identified by the Court in this order (or file a notice of
3 voluntary dismissal); and

4 3. If Plaintiff fails to file an amended complaint in compliance with this order, the
5 Court will recommend dismissal of this action, with prejudice, for failure to obey a court order
6 and for failure to state a claim.

7
8 IT IS SO ORDERED.

9 Dated: August 10, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE